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SUBJECT: SENEGAL AMENDS ITS CONSTITUTION TO PROSECUTE HABRE

**¶1.** (SBU) Summary: On April 8, the Senegalese National Assembly amended article 9 of Senegal's Constitution to enable local courts to prosecute former Chadian President Hissene Habre. The debate was passionate and took three-and-a-half hours. The overwhelming majority of President Abdoulaye Wade's party, more than eighty members, voted in favor of the law arguing that Africa has grown and must not let Europe prosecute its leaders. Eight members including two senior members from the president's camp rebelled and voted against the law on the ground that allowing international criminal law to be retroactive in Senegal sets a dangerous precedent. END SUMMARY.

GOS's rationale for the Law

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**¶2.** (SBU) The Minister of Justice defending the bill noted that the amendment adds a new paragraph to article 9 of the Constitution which used to read "No one shall be condemned for an act which did not constitute a criminal offence at the time it was committed." The amendment adds "However, the provision of the preceding paragraph, shall not prejudice the trial, judgment, and condemnation of any person for any act or omission which, at the time it was committed was criminal according to international law, especially acts of genocide, crimes against humanity and war crimes."

Fulfilling International Commitments

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**¶3.** (SBU) In fact, this amendment is a modified version of Article 15 of the UN Covenant on Civil and Political Rights of 1948. Believing that idea of a "general principles of law recognized by the Community of nations" was too broad for Senegal, experts at the Ministry of Justice changed the language to "international law" and defined more narrowly the crimes under the scope of the amendment limiting them to genocide, crimes against humanity, and war crimes. Prior to this amendment, Senegalese judges used article 9 of the Constitution to rule that Senegal could not prosecute Habre and lacked criminal procedures to that effect. This, as recognized by the GOS, violated article 27 of the 1969 Vienna Convention on the Law of Treaties which forbids a state party to invoke provisions of its internal laws "as justification for its failure to perform a treaty."

Africa Must Prove its Legal Maturity

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**¶4.** (SBU) During the heated debate, some deputies questioned who or which state could legitimately prosecute former African dictators accused of genocide or crimes against humanity. There was a unanimous view, echoed by the Minister of Justice, that the "toubabs" (white Europeans) did not have such legitimacy because many of their colonial crimes remain unpunished and they all congratulated President Wade for having refused to extradite Habre to Belgium. The Deputies opined that Western powers only respected international law when it conforms to their interests. However, leading members of the Assembly cautioned that international law

should not be confused with international relations and Africa should not condone the behavior of its dictators. The leader of the majority noted that this was an opportunity to prove that Africa has competent judges and that its criminals could be prosecuted according to international standards.

Too Many Amendments

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15. (SBU) Some members complained that the government was trivializing the Constitution with constant amendments. They deplored that the amendment they were examining was undertaken under pressure from Western NGOs such as Human Rights Watch. Deputy Elhadj Diouf, one of Habre's many attorneys, noted that Senegal was the only country on Earth to place in its Constitution a provision allowing international criminal law to be retroactive. Though he belongs to Wade's party, Diouf did not hesitate to claim that the amendment in question was being forced upon Senegal and added that the true criminal is not Habre but the current Chadian President Idriss Deby who, as the former head of Secret Services, carried out the executions that Habre is alleged to have ordered. He noted that Habre faced many accusations with little supporting evidence.

Comment

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16. (SBU) While it is true that the National Assembly typically rubberstamps the government's draft laws, this case proved to be so controversial that a first draft was withdrawn at the committee level. The deputies who first rejected the idea of having international criminal law be retroactive in Senegal compromised with the Executive branch agreeing to strictly limit any amendment to genocide, crimes against humanity, and war crimes. With this amendment in place, the final legal obstacle to try Habre has been

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removed. However, given the former dictator's network of supporters in political and religious circles, it remains to be seen if the case will not be purposefully dragged out to prolong the two decades of immunity he has enjoyed in Senegal.

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